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FILE NO. 97-003

CONSUMER PROTECTION:
Job Referral and Job Listing
Consumer Protection Act

The Honorable Barbara Flynn Currie
House Majority Leader
300 State House
Springfield, Illinois 62706

Dear Representative Currie:

I have your letter wherein you inquire whether the provisions of the Job Referral and Job Listing Services Consumer Protection Act (815 ILCS 630/1 et seq. (West 1994)) apply to private employment agencies licensed under the Private Employment Agency Act (225 ILCS 515/0.01 et seq. (West 1994)). For the reasons hereinafter stated, it is my opinion that the Job Referral and Job Listing Services Consumer Protection Act is applicable only to those licensed employment agencies that engage in activities encompassed within the definitions of "job listing service" or "job referral service" in the Act.

The Job Referral and Job Listing Service Consumer Protection Act contains a number of requirements that safeguard the interests of persons who utilize such services in seeking employment. Section 5 of the Act (815 ILCS 630/5 (West 1994)), provides, in pertinent part:

"5. Every Service shall be required to:

* * *

(3) Obtain a bona fide job order for employment prior to collecting any fee from a job seeker or sending out a job seeker to any place of employment.

(4) Furnish to each job seeker from whom a fee is received, at the time payment is received, a receipt in which shall be stated the name of the job seeker, the name and address of the Service and its agent, the date and amount of the fee and the purpose for which it was paid.

(5) Furnish to each job seeker, who is sent to a prospective employer, with [sic] a card or similar paper stating the nature of the prospective employment, the names of the job seeker and prospective employer, and the address of the employer.

(6) Verify each job listing authorization received from the authorizing employer within 7 days following the receipt or such authorization.

(7) Meet in person with a potential job seeker and enter into a written contract before a job seeker provides payment for a job list. A job list shall include, at a minimum, the following information:

(a) Name and address of the employer or agent of the employer, making the authorization;

(b) Job title and the qualifications therefor;

(c) Salary offered or to be paid for such job, if known;

(d) The duration of the job;

(e) Location of the job; and

(f) Certification that the position has not been filled as of the date that such a list is made available to the job seeker.

Said job list shall be considered deliverable under the contract."

Further, a service is required to refund the fee paid by any job seeker if the service does not furnish at least three employment opportunities meeting the specifications of the contract within 10 calendar days of the execution thereof.

Subsection 2(b) of the Job Referral and Job Listing Services Consumer Protection Act (815 ILCS 630/2(b) (West 1994)) defines the type of services to which the Act applies:

" * * *

(b) 'Job listing service', 'job referral service' or 'Service' means any person who by advertisement or otherwise offers to provide job seekers with a list of employers or list of job referrals, openings or like publications, or prepares resumes or lists of job seekers for distribution to potential employers, where a fee is charged to or collected from the job seeker,

either directly or indirectly, for such service.

* * *

"

Section 3 of the Act (815 ILCS 630/3 (West 1994)) provides:

"The provisions of this Act shall apply to any person engaging in any of the activities regulated by this Act, including persons who transact business in this State but whose residence or principal place of business is located outside of this State."

Section 4 of the Act (815 ILCS 630/4 (West 1994)) exempts from its provisions governmental agencies, labor unions, newspapers, certain not-for-profit entities, copy services, certain trade newsletters and:

"

* * *

(f) Any other person or business entity that does not collect from or charge the job seeker a fee for its services;

* * *

"

Lastly, section 11 of the Act (815 ILCS 630/11 (West 1994)) provides:

"Nothing in this Act shall affect the validity of any license previously issued to any person as a private employment agency pursuant to 'An Act to revise the law in relation to private employment agencies and to repeal an Act therein named', approved July 10, 1935, as amended, but all persons holding such licenses shall, in all other respects, be subject to the provisions of this Act."

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The fundamental purpose of statutory construction is to ascertain and give effect to legislative intent; in doing so, not only the language of the statute should be considered, but also the reason and necessity for the law, the evils to be remedied and the objects and purposes to be obtained. (People v. Haywood (1987), 118 Ill. 2d 263, 270-271.) When a statute is susceptible of two interpretations, it is proper to examine its legislative history for evidence of legislative intent. In re Marriage of Logston (1984), 103 Ill. 2d 266, 279.

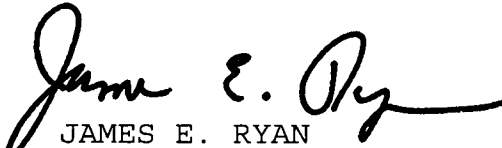
Section 11 could be interpreted as requiring all licensed employment agencies to comply with the Act without reference to the provisions of sections 2, 3 and 4 thereof. However, a review of the legislative history reveals a narrower intention. A specific effort was made in the General Assembly, in explaining the purpose of the then-proposed Act, to distinguish between job referral services and employment agencies. (Remarks of Rep. Young, May 12, 1988, House Debate on House Bill 3662, at 63.) (Indeed, section 10 of the Act (815 ILCS 630/10 (West 1994)) specifically requires newspaper ads placed by services to contain the phrase "not an employment agency".) The expressed purpose of the legislation was to address specific problems identified with businesses that accepted fees for referring people to jobs while having no connection with the potential employer. Apparently, some such services had merely taken listings from newspaper classified advertisements or referred people to jobs that did not

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exist. (Remarks of Sen. Newhouse, June 22, 1988, Senate Debate on House Bill 3662, at 250.)

The scope of the Act is relatively narrowly defined in sections 2, 3 and 4 of the Act, by specifically excluding businesses that do not charge a fee to the job seeker. That, combined with the sponsor's stated purpose for the legislation, indicates that the Act should be construed to extend to entities that are licensed as private employment agencies only if they engage in the specific activities which the Act seeks to regulate. It is my opinion, therefore, that if an employment agency engages in offering a "job listing service" or "job referral service", as defined in the Act, it must comply with the provisions thereof regardless of its status as a licensed employment agency.

Sincerely,


JAMES E. RYAN
ATTORNEY GENERAL